

FILED

MAY -5 2009

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

**EUGENE R. WEDOFF,
BANKRUPTCY JUDGE**

In re:)	Chapter 7
)	
MICHAEL E. FRIEDMAN)	Case No. 05-B-03591
CHRISTINE J. FRIEDMAN)	
)	
Debtors.)	
)	
)	
)	
HORACE FOX JR., as trustee for)	
MICHAEL E. FRIEDMAN)	
CHRISTINE J. FRIEDMAN)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 07-00844
)	
FM INDUSTRIES, INC.,)	
)	
Defendants.)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ORDER AWARDING TO
HORACE FOX, JR., NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE FOR MICHAEL E. FRIEDMAN
AND CHRISTINE J. FRIEDMAN, FOR ALLOWANCE AND PAYMENT OF ATTORNEYS' FEES AND
COSTS RELATED TO DEFENDANT'S MOTION TO CONTINUE TRIAL DATE**

TOTAL FEES REQUESTED:	\$22,757.50	TOTAL COSTS REQUESTED:	\$46.45
TOTAL FEES REDUCED:	\$17,870.00	TOTAL COSTS REDUCED:	\$46.45
TOTAL FEES ALLOWED:	\$4,887.50	TOTAL COSTS ALLOWED:	\$0.00

TOTAL FEES AND COSTS ALLOWED: \$4,887.50

THE COURT HAS MARKED THE ATTACHED TIME AND EXPENSE ENTRIES THAT HAVE BEEN DISALLOWED IN WHOLE OR IN PART. THE BASIS FOR EACH DISALLOWANCE IS DISCLOSED BY THE NUMERICAL NOTATION THAT APPEARS ON THE LEFT SIDE OF EACH HIGHLIGHTED ENTRY. THE NUMERICAL NOTATIONS REFER TO THE ENUMERATED PARAGRAPHS BELOW.

(1) **Time Spent on Work Not Made Necessary by FMI's Motion to Continue Trial Date**
The Court denies the allowance of compensation for time spent on work unrelated to the defendant's motion to continue trial date, heard on June 24, 2008.

(2) **Insufficient Description**
The Court denies the allowance of compensation for the following task since the description of the time entry fails to identify in a reasonable manner the service rendered. *In re Pettibone*, 74 B.R. 293, 301 (Bankr. N.D. Ill. 1987) ("A proper fee application must list each activity, its date, the attorney who performed the work, a description of the nature and substance of the work performed, and the time spent on the work. [Citation omitted] Records which give no explanation of the activities performed are not compensable."); *In re Wildman*, 72 B.R. 700, 708-9 (Bankr. N.D. Ill. 1987) (same).

(3) Deduction For Fees Not Itemized

The Trustee requests \$22,757.50 in attorneys' fees and \$46.45 in costs, but only provides itemized entries for \$20,110.00 in fees. The court denies fees and costs in the amount of \$2,693.95 due to the Trustee's failure to properly account for all of the requested fees and costs incurred.

Dated: May 5, 2009


Eugene R. Medoff
United States Bankruptcy Judge

MANDELL MENKES LLC

Suite 300
333 West Wacker Drive
Chicago, Illinois 60606
Telephone (312) 251-1000
Fax (312) 251-1010

Federal Tax I.D. #36-4374891

April 22, 2009

Invoice # 34454

Lehman & Fox
Six E. Monroe Street
Suite 1104
Chicago IL 60603

Re: *Michael and Christine Friedman*
Amended Petition for Fees
Case No.: 05-03591
Our File No.: 80003z(b)

Statement for legal services rendered:

			<u>Hours</u>	<u>Amount</u>	
3/17/2008	BNM	Review letter from Mr. Rhine regarding representation of Mr. Mayster; research regarding why he should be disqualified.	2.40	1,020.00	#1
3/18/2008	LL	Perform Westlaw research regarding Northern District of Illinois cases regarding court's authority to enforce settlements or stipulations made between the parties; conference with Mr. Menkes regarding same.	0.40	100.00	#1
	BNM	Research regarding Bankruptcy Court's ability to enforce terms of stipulation.	0.30	127.50	
3/19/2008	BNM	Further changes to motion to enforce stipulation.	0.10	42.50	
4/29/2008	BNM	Review transcripts of depositions of Mr. Friedman taken in copyright case.	2.20	935.00	#1

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			<u>Hours</u>	<u>Amount</u>
6/10/2008	BNM	Review objection to CCSI claim.	0.30	127.50
6/12/2008	LL	Conference with Mr. Menkes regarding research for bench memorandum regarding necessity for a full accounting	0.50	125.00
	BNM	Call with Messrs. Rhine, Roberts and de'Medici, regarding stipulations, deposition of Fox, FMI's dissatisfaction with Fox's discovery requests.	0.40	170.00
	BNM	Meet with Mr. de'Medici regarding outstanding items, including discovery dispute, witness exhibit lists, motions in limine, trial subpoenas, deposition of Fox.	0.40	170.00
6/13/2008	LL	Begin Westlaw research regarding necessity for a full accounting (Restatement of Contracts)	0.70	175.00
	BNM	Prepare list of witnesses, and summaries of their expected testimony.	0.70	297.50
	BNM	Call with Mr. de'Medici regarding witnesses/exhibit lists.	0.20	85.00
	BNM	Review and suggest revisions to draft Order regarding Denial of FMI's motion for protective order and partial denial of FMI's motion to extend discovery period.	0.10	42.50
	BNM	Prepare list of exhibits to be used at trial, review transcripts to see which should be used.	2.30	977.50
6/16/2008	LL	Conduct research on Westlaw regarding Restatement of Contracts and for Illinois cases where contract required ministerial acts.	1.40	350.00

#1

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			<u>Hours</u>	<u>Amount</u>	
6/16/2008	BNM	Review materials from CCSI to see which are relevant to allegations and affirmative defenses of complaint.	4.80	2,040.00	
6/17/2008	KEA	Conference with Mr. de'Medici regarding tomorrow's proposed order call.	0.10	25.00	
	BNM	Draft motions <i>In Limine</i> .	2.90	1,232.50	#1
	BNM	Meet with Mr. de'Medici regarding motions <i>in limine</i> .	0.30	127.50	
6/18/2008	KEA	Conference with Mr. de'Medici; prepare for and attend court hearing.	1.00	250.00	
	BNM	Draft letter to Messrs. Roberts and Rhine regarding what Trustee relied upon in filing complaint; review prior disclosures regarding same.	0.30	127.50	
6/19/2008	BNM	Meet with Mr. Mr. de'Medici after deposition to discuss strategy in light of new avenues apparently being proposed by FMI.	0.40	170.00	
	BNM	Meet with Mr. Roberts after deposition of Mr. Fox to discuss direction of case.	0.20	85.00	#1
	BNM	Meet with Mr. Fox during and after deposition regarding FMI's apparent new strategy of painting him as an overzealous prosecutor.	0.50	212.50	
6/20/2008	BNM	Review FMI's motion to continue trial date; meet with Mr. de'Medici regarding same.	0.40	170.00	
	BNM	Review FMI's list of exhibits and witnesses.	0.40	170.00	

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			<u>Hours</u>	<u>Amount</u>	
6/20/2008	BNM	Research dates on which various pleadings were to be, and were actually filed, to prepare response to motion to continue trial date.	0.60	255.00	
	BNM	Send e-mail of letter from Mr. Jordan to Ms. Roberts; call with Mr. Jordan to Mr. Roberts; call with Mr. Roberts regarding same.	0.20	85.00	#2
6/22/2008	BNM	Draft response to FMI; motion to continue trial date.	2.30	977.50	
	BNM	Exchange e-mails with Mr. deMedici regarding strategy for supplementing Motion in Limine based on new late-filed witness list and exhibit list.	0.20	85.00	
6/23/2008	BNM	Prepare declaration of Mr. Menkes in response to motion to continue trial date.	0.40	170.00	
	BNM	Work on bench memorandum e what constitutes a "valid reason" to request corporate documents.	0.40	170.00	#1
	BNM	Review Bench memorandum drafted by Ms. LaVine on issue of failure by promisee to take action; look for additional authority on issue.	1.70	722.50	
	LL	Continue research supporting argument that a full accounting is unnecessary; conference with Westlaw reference attorney regarding same; conference with Mr. Menkes regarding findings and additional research for bench memorandum.	2.20	550.00	
	BNM	Finalize response to motion to continue trial date; research dates to be placed into response.	2.30	977.50	
	LL	Research Illinois law regarding party who deliberately prevents condition to occur cannot claim failure of fulfillment defeats his liability.	1.20	300.00	#1

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			<u>Hours</u>	<u>Amount</u>	
6/24/2008	LL	Review treatise regarding proper purpose for requesting to examine corporate records; conduct research on Westlaw regarding same.	1.20	300.00	#1
	BNM	Make up timeline in preparation for hearing on motion to delay trial.	0.60	255.00	
	BNM	Appear on motion to delay trial.	1.10	467.50	
	BNM	Meet with o/c regarding motion to delay trial.	0.30	127.50	
	BNM	Meet with Mr. de'Medici and Mr. Fox regarding motion to delay trial.	0.30	127.50	
	BNM	Prepare new lists of grounds for Motion in Limine based on FMT's belated disclosures, in case court asks for bullet point list.	0.80	340.00	#1

For Professional Services Rendered

39.50 \$15,265.00

Balance Due

\$15,265.00

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Bruce N. Menkes	30.80	425.00	\$13,090.00
Lindsay LaVine	7.60	250.00	\$1,900.00
Keith E. Allen	1.10	250.00	\$275.00

Law Office Bruce E. de'Medici
333 West Wacker Drive
Suite 300
Chicago, Illinois 60606
Telephone 312.251.1000
Facsimile 312.251.1010

2/2/2008

Billing
Michael & Christine Friedman

Date	Description	Time	Amount	
6/3/2008	Review of arguments to respond to apparent (unpled) affirmative defense that reopening the case was Conference BNM-review FMI's theory about no contract exists, to prepare for cross-examination at trial	0.70	\$297.50	#1
6/5/2008	Letter to J Rhine confirming his receipt of subpoenas	0.30	\$127.50	
6/16/2008	Strategy for using motion in limine to exclude witnesses and exhibits by FMI	0.20	\$85.00	
6/16/2008	Conf with BNM to review grounds for in limine order against FMI re witnesses and exhibits	0.40	\$170.00	
6/17/2008	Edits to motion for in limine order	0.20	\$85.00	
6/17/2008	Re-review of Trial Order to marshal arguments why FMI should not be able to introduce exhibits or witnesses, anticipating arguments in court	0.90	\$382.50	#1
6/17/2008	Analysis to support responding to motion in limine	0.90	\$382.50	
6/22/2008	Review of trial arguments and cross-examination outline for upcoming trial to meet affirmative defenses and excluding arguments outside scope of affirmative defenses	0.30	\$127.50	
6/23/2008	Conference BNM to review trial strategy, legal issues and arguments, meeting FMI's affirmative defenses through documents and Michael Friedman's deposition testimony	3.20	\$1,360.00	#1
6/23/2008	Prepare to respond to FMI's motion to continue trial-	1.10	\$467.50	
6/23/2008	review any benefits to Trustee to continue trial	0.90	\$382.50	
6/23/2008	Conference with BNM to review advantages and disadvantages of continuing the trial and responding to FMI's motion to continue trial	0.30	\$127.50	

Prepare for hearing on motion to exclude witnesses and		
6/23/2008 exhibits	0.90	\$382.50
Court - FMI's motion to continue trial and Fox's motion in		
6/24/2008 limine	1.10	\$467.50
	11.4	\$4,845.00
TOTAL BILLING		